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Forty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1178th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 October 1992, at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1178/Add.1.

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GE.92-18005 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4)

Initial report of Burundi (CCPR/C/68/Add.2; HRI/CORE/1/Add.16)

At the invitation of the Chairman, Mrs. Samoya Kirura, Mr. Birihanyuma and Mr. Ndikuriyo (Burundi) took places at the Committee table.

1. Mrs. SAMOYA KIRURA (Burundi), Ambassador and Permanent Representative of Burundi to the United Nations Office and the other international organizations at Geneva, introduced the other two members of the delegation, namely Mr. Birihanyuma, President of the Supreme Court, and Mr. Ndikuriyo, Deputy Director of the Centre for the Promotion of Human Rights.

2. The CHAIRMAN said that the Committee had before it two documents which constituted the initial report of Burundi on the implementation of the International Covenant on Civil and Political Rights: one document (CCPR/C/68/Add.2) had been submitted in November 1991, while the second, which had just been submitted to the Centre for Human Rights and had not yet been circulated to members of the Committee, was the core document forming the first part of all reports submitted by States under the various human rights instruments to which they were parties (HRI/CORE/1/Add.16).

3. Mr. BIRIHANYUMA (Burundi) introduced Burundi's initial report, which described the measures taken by the Burundi Government to give effect to the provisions of the International Covenant, ratified on 2 March 1990. The report comprised four parts. The first part was a general presentation of Burundi which enabled human rights to be placed in a historical, political, social and cultural context. The second part set out the general legal framework for the protection of human rights, informed the Committee on the judicial institutions with competence in human rights matters, and reviewed the judicial organs to which victims of possible violations could apply, as well as the administrative authorities that acted in non-contentious matters. Since there could be no human rights without economic and social development, a structure had been created for studying human rights problems within the framework of the Economic and Social Council.

4. The third part described the measures taken by the Burundi Government to protect and promote civil and political rights in accordance with the Covenant. In that connection, it should be pointed out that the instruments mentioned as having been ratified by Burundi were exclusively those relevant to the International Covenant on Civil and Political Rights. There were other international instruments that had been ratified by Burundi.

5. Concerning measures taken in accordance with the provisions of article 9 of the Covenant (CCPR/C/68/Add.2, paras. 16-20), it should be mentioned that the 1981 Constitution, and more particularly the new Constitution of March 1992, in its article 14, guaranteed liberty of person, which could be restricted only by law, and stipulated that anyone deprived of his liberty must be treated with respect for the inherent dignity of the human person. The passages in the report relating to the Constitution should be read with

reference to the new Constitution of March 1992, which accorded a more prominent position to human rights than the previous one had done - 30 articles, as against 11 articles in the 1981 Constitution.

6. With regard to the implementation of article 12 (4) of the Covenant, he wished to correct the figures given in the report (CCPR/C/68/Add.2, para. 27). It was not 15,000 persons who had already returned to Burundi under voluntary repatriation arrangements but 37,629 according to the statistics of the Office of the United Nations High Commissioner for Refugees, and 40,000 according to the authorities of the Burundi Ministry of the Interior, who also counted persons who did not cross through border posts when returning to the country. Lastly, regarding the implementation of article 21 of the Covenant on the right of peaceful assembly (para. 38), the text should be interpreted in the light of the new 1992 legislation on public demonstrations, non-profit-making associations and political parties in Burundi.

7. The fourth part, finally, dealt with progress already made. As diplomatic missions in Burundi could attest, since 1987, when the Third Republic had been established, the Burundi authorities had decided to put an end to the sorry tradition of division, violence and irresponsibility which had previously characterized the country. They had proposed to the Burundi people, without any distinction, a plan for a society based on the positive values of national unity, reconciliation, democracy and promotion of human rights. A long process of dialogue and consultation between rulers and ruled had then been initiated with all strata of the population and had resulted in two fundamental instruments for the rule of democracy and the protection of human rights: firstly, the Charter of National Unity, which had been adopted by an 89 per cent majority in a referendum of 5 February 1991; and, secondly, the Constitution of March 1992, which had won a 90 per cent vote of approval in a referendum. The massive vote of all categories in Burundi in favour of unity was a historic victory, for it signified a rejection of violence, genocide, exclusion, insecurity and exile, or in other words a rejection of any human rights violation.

8. The establishment of a national commission for the return, reception and reintegration of Burundi refugees in January 1991 was an additional token of the determination of the Third Republic authorities to take specific measures in favour of refugees. More than 40,000 persons had already returned to Burundi, and the process was continuing. It should be emphasized that the flow had been maintained even at the height of the attacks of November 1991 and April 1992, thereby defeating one of the purposes of those attacks, namely to frighten the refugees and put an end to the voluntary repatriation movement. The refugees had thus demonstrated to the Hutu group which styled itself the Hutu People's Liberation Party but which was in fact no more than a tribal, terrorist band, that the policy of national unity and reconciliation was not just a hollow exercise but had borne fruit. In June 1992, representatives of the Burundi refugees living in Tanzania, who had not yet come to believe in that unity, had visited their country of origin and had understood the reality of restored unity. Since June 1992, Burundi refugees had been returning from Tanzania in their hundreds. Representatives of Burundi refugees in Rwanda were also expected to make a similar visit. In the meantime, however, more than 1,000 Burundi refugees in Rwanda had decided to return to their homeland in August, September and October 1992.

9. The measures taken in favour of democratization and promotion of human rights extended to the recognition of democracy based on political pluralism. Under a law promulgated in April 1992, political groupings were required to register with the Ministry of the Interior and the Ministry of Local Community Development; seven groupings had already beer authorized as political parties. Legislative and presidential elections were scheduled for March 1993.

10. Despite all those democratic initiatives by the Third Republic, a tribal-terrorist movement had cast a shadow over Burundi in November 1991 and April 1992. The outdated, racist ideology of that movement, the Hutu People's Liberation Party, excluded a multiparty system, since it claimed that there could only be, on the one side, the party of the Hutus and the Twas and, on the other, the party of the Tutsis, political competition being possible only between rival ethnic groups and not between men and women rallying to the positive values of national unity and development with a view to constructing an integrated, democratic society. In addition to carrying out violent attacks, that movement engaged in disinformation aimed at national and international opinion. The Hutu party was planning genocide and, in pursuance of that policy, spent months stirring up the Hutu peasants to believe that the Tutsis intended to exterminate them and that they should strike first. Once the Tutsis had been massacred, the Hutus said it was the army which had orchestrated the operation to justify the large-scale repression of the Hutus and exaggerated the number of victims of that repression tenfold.

11. However, the forces of the Hutu party were now on the run, since all ethnic groups in the population had understood their tribal-terrorist ideology and bloody aims and had valiantly resisted their aggressions in November 1991 and April 1992.

12. Bearing in mind its level of social and cultural development, Burundi still had many obstacles to overcome on the path to democracy, social justice and all-round development. However, the Government and people of Burundi would spare no effort to attain those noble ideals.

13. The CHAIRMAN invited members of the Committee who so wished to make comments on the Burundi report or put questions to the Burundi delegation.

14. Mr. NDIAYE thanked the Government of Burundi for submitting its initial report in accordance with the Committee's guidelines, one year after its accession to the Covenant. Unfortunately, the report was too succinct to give a precise idea of the human rights situation in the country. It was not enough to cite constitutional and legislative provisions to illustrate a situation, and more specific information should have been given about actual practice. He hoped that the delegation's replies to members' questions would serve to supplement the report.

15. His first question concerned article 2, in respect of which the report stated that "Burundi respects and ensures to all ... the rights recognized in the International Covenant on Civil and Political Rights ..." (CCPR/C/68/Add.2, para. 3): it should be specified which rights were involved. With regard to article 3, it was stated that "Burundi ensures the equal right of men and women to the enjoyment of all civil and political rights" (para. 8), but the report did not say how or to what extent. In view

of the social, economic and cultural constraints which all countries experienced in that area, it could be imagined that Burundi also had difficulties in that regard.

16. With respect to article 4, he would like to know whether the Secretary-General had been notified of the proclamation of the state of emergency and, if so, what derogations there had been from the Covenant. The report gave no example to illustrate what was said in paragraph 13 about the implementation of article 7, when it could, for instance, have mentioned the instructions given to persons liable to violate the provisions of the Covenant. Was there any case law in that area? That was a question which particularly concerned him, since members of the Committee had received information, particularly from non-governmental organizations, which seemed to concur in their serious and persistent accusations concerning Burundi, where torture was said to remain a sad reality among gendarmerie squads. The persons responsible reportedly went unpunished, despite the fact that the Burundi Penal Code laid down penalties for such conduct.

17. With regard to the right to liberty and security of person guaranteed in article 9, the report did not say what happened in the event of a violation of that right. It was stated in paragraph 18 that anyone arrested or detained on a criminal charge must be brought "promptly" before a judge, but it was not specified how long a period was involved.

18. With regard to liberty of movement, as provided for in article 12, the provisions of the law should have been quoted. Concerning article 13, which related to aliens, details should have been given of the conditions of admission and sojourn and the conditions for expulsion laid down by the law on the immigration and residence of aliens (para. 28).

19. In connection with article 14, he referred to the accusations made against Burundi, particularly by Amnesty International, which had reported that there were many cases of improper or prolonged pre-trial detention. It was alleged that the person concerned was not informed of the reasons for his arrest; that policemen did not state their identity and acted without a proper mandate; that the Criminal Investigation Department had carried out arbitrary arrests, particularly in November 1991 and March 1992; and that there had been serious breaches of the Standard Minimum Rules for the Treatment of Prisoners. It was also reported that the detention centres were overcrowded, particularly at Bujumbura, and he inquired about the reasons for that state of affairs.

20. With regard to article 16, the references were imprecise (para. 34). In connection with article 18 (para. 36), reference was made to a law whose content was not specified. As for article 20 (para. 37), the measures taken to implement its various provisions should be indicated. In the commentary on article 24 (para. 40), the report merely stated that Burundi had ratified and accepted the Convention on the Rights of the Child, but it was the application of the International Covenant on Civil and Political Rights that interested the Committee.

21. With regard to article 25 (para. 41), he inquired how many political parties and trade unions there were in Burundi and whether it was possible to

present independent candidatures. With respect to article 27, he asked whether the Charter of National Unity had achieved its aim of integrating all citizens into the country's political life.

22. In general, he noted that, while Burundi had undeniably made progress on human rights in recent years, there were continuing reports of massive violations of those rights, particularly in connection with the events of November 1991 and the political trials of July 1992. Another source of concern was the Burundi army, which was dominated by the ruling Tutsi minority. What measures were taken to enable the Hutus, who formed the majority ethnic group, to join the army despite the obstacles they faced? How many Hutus were there at the Higher Military Academy in Bujumbura? The Government had been called upon to reform the Burundi gendarmerie, which was regarded as a formidable force, particularly because of the contempt with which it treated the Hutus, and to elucidate the tragic events that had occurred in the country by establishing the individual responsibility of particular members of the armed forces. He inquired how many soldiers or gendarmes had been questioned in connection with the abuses committed in November and December 1991.

23. The other major issue which arose in connection with Burundi was the refugee question. He would accept the figure of 40,000 given by the delegation. However, the Government was criticized for carrying out a policy of voluntary repatriation which contravened article 33 of the Geneva Convention relating to the Status of Refugees and article 18 of the Covenant. There were reported cases of people who had agreed to be repatriated after receiving assurances of their safety, but who had then been thrown into prison, had had to go into exile or had disappeared. Why did Burundi not envisage the promulgation of a general amnesty law? Lastly, what was the Government's position with regard to the organization of a round-table, as proposed by certain Burundi nationals living abroad?

24. At the present time, Burundi had no less than 500 political prisoners. He inquired whether they had been tried, what steps the Government had taken to ensure respect for the right to a defence which had allegedly been violated, particularly during the recent trial of members of a political party, and, lastly, what the authorities' aim had been in imposing death sentences which had sometimes been interpreted as discriminatory verdicts against a particular ethnic group.

25. Under article 178 of the new Constitution, some opposition parties could apparently not put forward candidates for election as directors of communal organs. That provision would tend to institutionalize a kind of ethnic segregation to which the Government nevertheless claimed to be opposed. Were the authorities planning to remove that obstacle to the exercise of civil and political rights, which was unacceptable in a pluralist democracy? He would also welcome information concerning the proposed new law on the media.

26. Lastly, it seemed that some associations showing a desire to take an independent stance vis-à-vis the authorities sometimes waited a long time before receiving official authorization. That was reportedly the case, in particular, of the Rural Press Association, which had been awaiting authorization for 15 months. If that practice did exist in Burundi, were the

authorities planning to put an end to it and, if so, how soon? Early in the year, the Chief of State had declared that he would associate the opposition parties with the transition period with a view to the forthcoming legislative and presidential elections, but the Prime Minister had recently contradicted that statement at a press conference. What exactly was the truth of the matter?

27. In conclusion, he stressed the Committee's desire not to act as a tribunal but to engage in a genuine dialogue with the Burundi authorities so as to help them to make the necessary reforms. He added that the Committee was a body composed of independent experts that was responsible for overseeing the full implementation of the provisions of the Covenant, irrespective of any ideological considerations. Of course, the reports to which he had just referred were not gospel, and he would be happy if the Burundi delegation could enlighten the Committee on the exact situation regarding all those matters.

28. Mrs. SAMOYA KIRURA (Burundi) explained that the core document (HRI/CORE/1/Add.16) just submitted by Burundi contained an update of the initial report (CCPR/C/68/Add.2) which it had submitted in November 1991. It was therefore a new and updated report which replaced the previous report. She would like that point to be clear to all members of the Committee.

29. Mrs. KLEIN (Centre for Human Rights) said that, on 8 October 1992, the secretariat had received, through the Mission of Burundi to the United Nations, a core document drawn up in accordance with the consolidated guidelines (HRI/1991/1) which contained an update of the initial report of Burundi submitted in November 1991. That document (HRI/CORE/1/Add.16) had been received too late to be circulated in time to all members of the Committee in all the working languages; however, copies of the original French text would be distributed in the course of the current meeting.

30. The CHAIRMAN said he believed that some members of the Committee had a copy of document HRI/CORE/1/Add.16, or more accurately its first part; the other part, which according to the Burundi delegation constituted an updated version of the initial report of November 1991 (CCPR/C/68/Add.2), had not yet been distributed. In that connection, he noted that a report submitted to the Centre for Human Rights only a few days before the opening of a session of the Committee could not, for technical reasons, be circulated in time to be considered at that session. It was therefore the initial report (CCPR/C/68/Add.2) submitted by Burundi in November 1991 that the Committee was called upon to consider. However, the Burundi delegation was at liberty to indicate the new elements contained in document HRI/CORE/1/Add.16, and the Committee would take account of that oral updating in its considerations and conclusions.

31. Lastly, he emphasized that Burundi was one of only a very few countries to have submitted a core document drafted in accordance with the consolidated guidelines (HRI/1991/1). He thanked the Burundi authorities, who had thereby demonstrated their desire to cooperate with the Committee, for doing so.

32. Mr. EL SHAFEI, welcoming the Burundi delegation, said it was unfortunate that the update of the initial report (CCPR/C/68/Add.2) had reached the Centre for Human Rights at such a late stage, but on the other hand he, like the Chairman, was pleased that the Burundi authorities had drawn up a core document in accordance with the consolidated guidelines which would certainly give members a better knowledge of the human rights situation in Burundi and would contribute to the dialogue between the authorities of that country and the various United Nations treaty bodies responsible for monitoring the implementation of international human rights instruments.

33. The initial report of November 1991 (CCPR/C/68/Add.2) was rather laconic but nevertheless provided some very precise information, particularly in its Part Two, on developments in the political and social situation in Burundi and the difficulties which had adversely affected respect for and promotion of human rights in that country.

34. With regard to the Charter of National Unity, which was dealt with at length in document CCPR/C/68/Add.2, he asked what was that Charter's legal status and whether it covered all the human rights embodied in the Covenant. The Charter was doubtless the culmination of the efforts made by the Government to reconcile and harmonize the different components of Burundi society. Unfortunately, those efforts had been thwarted by the events of 1991, which had been accompanied by very serious violence. The current Government was clearly trying to rectify the errors of its predecessors, but there was no escaping the fact that the repressive measures taken by the police forces and the army during the events of 1991 had claimed fresh victims and that the number of cases of torture and disappearance had increased. He was extremely concerned over the events of November 1991 and, in particular, wondered about their possible implications for the authorities' commitment to respect and promote human rights, especially the rights proclaimed in the Covenant.

35. He inquired whether investigations had been conducted to establish responsibility in cases of disappearance and torture and to unmask the culprits, and whether measures had been taken for the immediate release of persons subjected to questioning, who had often had nothing to do with the events. There were reports from various sources of torture and ill-treatment being inflicted on detainees. Some detainees were even said to have confessed in order to avoid further torture. It also seemed that there was a new draft Code of Penal Procedure. He would welcome information on that matter and, in particular, would like to know whether the draft contained specific and clear guarantees against torture and whether it provided for investigations to be conducted into allegations of torture in prisons and other places of detention.

36. With regard to the question of refugees, it seemed that a number of bodies had been created as part of the ongoing process of political reform in the country, particularly a National Security Council and a commission for the return, reception and reintegration of refugees. What role had those bodies played during the crisis that had occurred in Burundi in late 1991? Had they functioned and had they been effective? Had they cooperated with the

authorities in their efforts to restore order? It seemed that repatriated refugees were the victims of intimidation measures and ill-treatment. He would like further clarifications on that disturbing question.

37. Lastly, it appeared that the authorities had allowed various non-governmental organizations to be established in Burundi. Had those organizations cooperated with the authorities during the 1991 crisis? He concluded by paying a tribute to one of them, the Burundi League for Human Rights "ITEKA", which had gathered information nationwide and published a report denouncing flagrant human rights violations in Burundi. That showed that local non-governmental organizations could help to relieve the sufferings of their people, provided that they were given the means to do so and were assisted in performing their role.

38. Miss CHANET extended a warm welcome to the Burundi delegation and hailed the initiative taken by the Government in including many articles of the Covenant in the new Constitution of March 1992. She would, however, like to know why a number of the Covenant's provisions did not appear in the new Constitution, particularly the provisions of article 14 concerning free legal aid for persons who could not afford to pay for defence counsel, and those of article 8. Moreover, the rights set out in article 4 of the Covenant did not seem to be included among the fundamental rights embodied in the Constitution. In particular, article 79 of the Constitution listed the powers of the President in the event that a state of emergency was proclaimed, but did not incorporate the limitations provided for in article 4 of the Covenant. She asked the Burundi delegation for clarifications as to how the articles of the Covenant incorporated in the Constitution had been chosen and on the situation regarding to the provisions of article 4 of the Covenant.

39. She would also like to know what was the hierarchy of legal norms in Burundi, and particularly what happened when provisions of the Constitution were in conflict with an internal law. That was no merely theoretical question, since articles 9 and 14 of the Covenant, while partly reproduced in the Constitution, still had no equivalent in the Penal Code and the Code of Penal Procedure. In that connection, further information regarding the work in progress with a view to amending those two Codes would be welcome.

40. The documents available to her, namely document CCPR/C/68/Add.2 and the first part of document HRI/CORE/1/Add.16, did not give her a precise idea of the judicial organization in Burundi. She asked whether the principle of the irremovability of judges existed in that country and what was the role played by commissions. Those bodies seemed to have powers identical to those of judges, particularly the Judicial Supervisory Commission, the Mandi Commission, etc. She asked the Burundi delegation to clarify the exact competence of those commissions.

41. With regard to the implementation of article 3 of the Covenant, she agreed with Mr. Ndiaye that, given the economic and sociological constraints, it was not enough merely to proclaim equality between men and women. She would like to have further details on the situation in that area.

42. In connection with article 6 of the Covenant, she would like to know in which cases the death sentence could be imposed under the Penal Code. She

also asked why, following the bloody events of 1991, virtually no one in the law enforcement forces had been brought to court, whereas many civilians had been put on trial for crimes and offences committed at that time. She would also like to have further information and to hear the reaction of the Burundi delegation on the cases of torture and ill-treatment allegedly inflicted by members of the Bujumbura gendarmerie.

43. Concerning article 9 of the Covenant, were persons placed in police custody informed of the reasons for such custody and its duration, and was it true that no limits or conditions were established in that area? What were the legal conditions and the conditions for the application of police custody and pre-trial detention?

44. With respect to article 12 of the Covenant, it was stated in the Burundi report (CCPR/C/68/Add.2) that the laws on the movement of persons were very clear. Perhaps the Committee could be informed of those laws.

45. She also asked whether the Burundi delegation could indicate in what conditions and in which cases the Decree-Law of 31 December 1991 making it obligatory to request prior authorization to hold a public demonstration was applied.

46. The Constitution laid down strict regulations which made it very difficult to establish political parties. Whereas numerous and highly precise criteria for prohibition were laid down elsewhere in the Constitution, its article 56 set forth very vague criteria. That was all the more disturbing in that the conditions in which parties were formed and exercised their activities were determined by law (art. 60 of the Constitution), thereby giving rise to limitations in addition to those enunciated in articles 55, 56 and 57. How could the application of those articles and the law on parties be reconciled with articles 19, 22 and 25 of the Covenant? In view of the difficulties mentioned, how could citizens genuinely participate in public life?

47. Mr. WENNERGREN congratulated the Burundi delegation on its report (CCPR/C/68/Add.2), a short but well-written document which constituted a good starting-point for a dialogue with the Committee.

48. He drew attention to article 10 of the Constitution, which provided that the International Covenant on Civil and Political Rights formed an integral part of the Constitution. It was therefore not very important that a particular article of the Covenant should not be specifically mentioned in the Constitution. However, it was necessary to know exactly what was the status of the Covenant in the legal system. There was also a need to know how the Charter of National Unity, which seemed to play an important role in political life in Burundi, reconciled the interests of Hutus and Tutsis.

49. He noted that there was a kind of ombudsman's office in Burundi. Did it receive complaints from individuals, conduct investigations and take steps to promote the rights of the individual?

50. With regard to the death penalty, he asked how its application could be reconciled with article 11 of the Constitution, according to which the human person was sacred and inviolable and the State had an absolute obligation to respect and protect it. Was it planned to abolish that penalty?

51. There were numerous reports of disappearances, torture and extrajudicial executions. In particular, the Committee had information provided by the Special Rapporteur on torture and the Special Rapporteur on summary or arbitrary executions. He would like to hear the Burundi delegation's comments on the case of Mr. Isidore Ciiza, whose wife and children had been killed by soldiers looking for him and who had subsequently "disappeared" after being tortured. It was disturbing to note that everywhere in the world children were the victims of violence. He asked what the Government intended to do to control the police and armed forces and prevent them from acting arbitrarily and savagely as they had done during the events of 1991 and 1992, and to restore confidence in the Burundi legal system. What sanctions would be taken against persons responsible for the violence?

52. According to the Burundi League for Human Rights, the Mandi Commission and the national commission for the return, reception and reintegration of refugees had been authorized to take decisions - in regard to detention, for instance - which were not open to appeal. He asked how such a practice could be reconciled with article 9 of the Covenant.

53. He further inquired in what places and in what conditions prisoners were held and whether the United Nations Standard Minimum Rules on the Treatment of Prisoners had been published and brought to the attention of prison staff.

54. Article 21 of the Constitution dealt with respect for privacy and exceptions to that principle. What did the Penal Code have to say on that subject and in what circumstances did it allow measures to be taken to restrict the right to protection of privacy?

55. According to the Burundi League for Human Rights, there was no law on freedom of the press. Was it intended to fill that gap?

56. Article 3 of the Constitution provided that "All Burundians over the age of 18 who enjoy their civil and political rights are entitled to vote under the conditions determined by law". He asked what was meant by the expression "who enjoy their civil and political rights" and to what restrictions it gave rise as far as the right to vote was concerned. Article 29 of the Constitution provided that "the right to participate in the direction and management of State affairs is subject to the legal conditions, particularly regarding age and capacity". What was meant by the term "capacity" in that context? Did it refer to mental capacity? Questions arose as to the compatibility of the restrictions imposed by articles 3 and 29 of the Constitution with article 25 of the Covenant.

57. Mr. MAVROMMATIS asked the Deputy Director of the Centre for the Promotion of Human Rights in Burundi what the functions of that Centre were and whether it was a Government body or independent. He noted that the late submission of

Burundi's most recent report, which had been distributed in the course of the meeting, had created some confusion. It would have been better not to distribute it and to base the discussion solely on previous documents.

58. Burundi had experienced many tragic events in the past. The efforts at national reconciliation and Burundi's accession to various international instruments were commendable, but that was not enough. According to reliable sources, human rights continued to be violated in the wake of the disturbances of April 1992. Information should be given not only on the laws enacted but also on the practical measures, decisions and mechanisms adopted to protect human rights and on the difficulties encountered. He hoped that the Burundi delegation would give further details of the de jure and de facto restrictions on the enjoyment of the rights proclaimed in the Covenant.

59. He would like to have more information on the relationship between the Constitution and the Charter of National Unity. Was that Charter still in force? According to the latter's provisions, even the Constitution could not run counter to the Charter. He inquired about the status of the new Constitution in the legal system. He would also like to know what was the situation regarding the former Constitution, to which reference continued to be made.

60. The Committee needed a lot more information on the state of emergency and the measures taken under it. Had there been any laws or regulations permitting derogations from particular provisions of the Covenant? Had new offences been defined and internment measures provided for? Had those matters come within the competence of the ordinary courts, the military courts or special courts?

61. In the light of the statement in the latest report that no death sentence had been imposed under the Third Republic, it was to be hoped that the death penalty would be abolished. If a military code existed, did it contain any provisions on the subject?

62. In conclusion, he inquired how the independence of the judiciary was ensured.

63. Mr. MÜLLERSON welcomed the recent adoption of the new Constitution, 30 articles of which were devoted exclusively to human rights. He emphasized the importance of article 10 of the Constitution, according to which international treaties on human rights, and in particular the International Covenants on Human Rights, formed an integral part of the Constitution. He also welcomed Burundi's ratification of various important international instruments relating to human rights. However, he found it difficult to form a concrete idea of the human rights situation in Burundi since the report in document CCPR/C/68/Add.2 did not contain much information on the practical implementation of the Covenant, and it would appear that the new report just distributed did not do so either.

64. It was impossible to address all those issues in the absence of pre-existing written information. He would like more details on the events of November 1991 following which arbitrary executions had occurred. What had been the cause of those events? Reports by non-governmental organizations,

both international and local, spoke of extrajudicial executions of civilians in places of detention. He would also like to know more about the events of April 1992.

65. He further inquired whether there was a law regulating the use of force, and in particular firearms, by the police. There had been various reports, particularly from non-governmental organizations, describing torture: one young student was said to have died as a result of the torture inflicted on him in a place of detention. Some reports also referred to arbitrary arrests. Some people had their detention extended without being brought before the courts.

66. With regard to the freedom of demonstration and assembly, he asked what possible restrictions might be imposed under a law of 31 December 1991. Was it true, as stated in a report by one non-governmental organization, that the Mayor of Bujumbura had decreed that demonstrations could take place only on Sunday? What was the Burundi delegation's reaction to the allegation that the Minister of Rural Development had ordered his staff to participate in the celebration of the fifth anniversary of the Third Republic on 3 September 1992?

67. He further asked what was the current status of the Charter of National Unity and what was its relationship with the new Constitution.

68. According to paragraph 41 of document CCPR/C/68/Add.2, every citizen had the right to take part in the conduct of State affairs. Such a provision could only be welcomed, but it should be indicated how it was applied. How many parties were there in Burundi? Apart from the new Constitution, were there special laws that regulated participation in the conduct of State affairs and in elections and, if so, what was their content?

69. Mr. AGUILAR URBINA said he would like to have more precise information on the application of each article of the Covenant in Burundi and on the position which the Covenant occupied in the country's legal system. The Burundi delegation had indicated that the Covenant formed part of the national Constitution, but he wondered what percentage of the electorate, particularly in terms of the various ethnic groups, had actually approved the Constitution. He also wondered how the Government had made known the Charter of National Unity and the Constitution to the population, considering that only 36 per cent of adults were literate. He would like to know how far the rights proclaimed in the Covenant and the Constitution could be derogated from.

70. With regard to social and cultural organization in Burundi in general, he inquired about the role of the institution called Ubushingantahe which was referred to in paragraph 64 of the initial report (CCPR/C/68/Add.2) and about the meaning of the expression "devotion to truth at all costs". He wondered whether, in the process of trying to protect that institution, cases of extrajudicial executions or torture might not occur. He would also like to be informed of the results of any investigations into cases of torture, cruel treatment and extrajudicial executions which had been reported in the previous two years. Lastly, he asked what offences could give rise to the death penalty and whether that penalty had actually been carried out.

71. Mr. SADI said it was necessary to bear in mind that Burundi was a relatively young country from the standpoint of its political and social organization and that the process of building the Burundi nation had not yet been completed. It was to be hoped that the dialogue with the Committee would make a contribution, however modest, to strengthening national institutions. It was also to be hoped that the next periodic report of Burundi would be drawn up in accordance with the Committee's guidelines. It was not enough to affirm, for instance in connection with article 2, that "Burundi respects and ensures to all individuals ... the rights recognized in the International Covenant on Civil and Political Rights" or, in general, to give abstract information. The Committee wanted to have information specifically illustrating the way in which the Covenant's provisions were applied in practice in Burundi. He would like to have further details, particularly regarding the reports that some members of the royalist party had been imprisoned before the referendum on the Constitution and that, in 1991, following the insurrectional movement, thousands of opponents had been executed without trial. There had been reports of many cases of extrajudicial executions, disappearances and violence, particularly in November and December 1991, and it was essential for the Burundi delegation to provide detailed information on all those points.

72. Mr. PRADO VALLEJO said he also regretted the failure of the initial report and the core document to describe the difficulties which Burundi, like all other countries, had to surmount in practice to ensure respect for human rights. In particular, nothing was said about the right to habeas corpus, which was most fundamental. He wondered whether the new Government really intended to improve the human rights situation in the country by promulgating new laws, and in particular he would like to know whether the text of the Covenant had been published in French and in the other local languages so that the population could be informed of the rights which it was guaranteed.

73. The Burundi delegation might indicate whether it was true that, in March 1992, some members of opposition parties who had spoken out against the new Constitution had been arrested and persecuted in violation of the right to freedom of expression embodied in article 9 of the Covenant, on which he noted that no comment had been made either in the initial report or in the core document. In that connection, he wondered whether there were any political prisoners or prisoners of opinion in Burundi who had been arrested for opposing or criticizing the Government. He also asked whether it was planned to amend the Code of Penal Procedure so as to bring it into line with the provisions of the new Constitution and guarantee procedural regularity.

74. On the social level, Burundi seemed to have an ethnic majority and an ethnic minority which were in permanent conflict. What was the Government doing to prevent such conflicts and to investigate the numerous disappearances of civilians to which they gave rise? For instance, he would like to know whether the persons responsible for the murder of Isidore Ciiza's family had been arrested and punished and whether the thousands of opponents of the Government who are being held without trial would be or had already been released. He also wished to know whether the Government had conducted investigations into the reported cases of torture, as it was obliged to do, and, if so, what the results of those investigations had been. In particular, he asked whether it was true that the members of the security forces, who were

often responsible for the acts complained of, enjoyed impunity under the 1960 Act and whether that Act had been amended or was still in force. He also inquired about guarantees for the defence, which seemed far from adequate in Burundi's judicial system.

75. Mr. ANDO said that he, too, found it unfortunate that the report did not contain all essential information on the difficulties arising in Burundi with regard to the implementation of the provisions of the Covenant. He had no doubt that the long history of colonization in the country needed to be taken into account in evaluating the existing situation.

76. He would like to know, first of all, what was the status of the Covenant under the new Constitution and whether the Government had notified the Secretary-General of the emergency situation existing in the country, as it was required to do under article 4 of the Covenant. In connection with the independence of the judiciary, he would like some information on the system for training, appointing and dismissing judges. What guarantees were applicable under article 14 of the Covenant and, if the existence of the National Security Council had implications for the protection of citizens' rights, what steps had been taken to avoid any abuses by that body?

77. With regard to the equality of the sexes, he wished to know whether the Burundi Government was planning to ratify the Convention on the Elimination of All Forms of Discrimination against Women and would like to have details on the nationality of married women, the transmittal of nationality from parents to children, the property rights of the spouses in marriage, and custody of the children.

78. With regard to freedom of thought, conscience and religion, he asked how the Government guaranteed the exercise of the rights set forth in article 18 of the Covenant, bearing in mind the conflict existing between Church and State and, on the subject of freedom of expression, inquired whether the media were State-owned and whether journalists, both Burundians and foreigners, were free to express their opinions.

79. Lastly, the Burundi delegation should give further details regarding the implementation of article 57 of the Constitution, which prohibited political parties from identifying themselves with an ethnic group or religion and, in general, on the steps taken to resolve ethnic conflicts.

80. Mr. HERNDL noted, like other members of the Committee, that neither the initial report nor the core document submitted by the Burundi Government contained the details needed for an evaluation of the human rights situation and the implementation of the Covenant in Burundi. In his opinion, the paramount issue was the relationship between the former Constitution and the new one. In that connection, he noted the statement in paragraph 16 of the initial report (CCPR/C/68/Add.2) that the former Constitution "serves as a general principle of law today", which he found rather surprising given that it was no longer in force. He also asked to what extent the Covenant was directly applicable by the judicial and administrative authorities. He further requested clarifications on article 40 of the new Constitution, which

apparently meant that fundamental rights embodied in the Covenant, for instance the right to freedom of expression and freedom of movement, were not fully guaranteed.

81. With regard to the judicial system and the administration of justice in general, the initial report gave no information, while the core document briefly mentioned, in paragraph 54, the judicial system in force but gave no details on the independence of judges. With regard to the application of article 6 of the Covenant, it was merely stated in paragraph 11 of the initial report that "Every human being has the inherent right to life", but nothing was said about the measures taken to ensure respect for that right, a point on which the Committee might well pose questions considering the massacres and summary executions that had been reported recently. Similarly, in connection with article 9 of the Covenant, nothing was said about how a person who was arrested could have recourse to a judicial authority so that it could determine whether the arrest was lawful. Nor was anything said under article 14 about the independence of the judiciary. With regard to article 27, the principle of the protection of minorities was simply recognized as being fundamental to democracy, but no information was given, for instance, on laws guaranteeing the right of minorities to education in their own language and to the safeguarding of their culture and religion.

82. Mr. LALLAH said that, as he understood it, the new Constitution that had been promulgated on 13 March 1992 was now the country's fundamental law. Therefore, like Mr. Herndl, he wondered about the apparent maintenance in force of some sections of the former Constitution. He also noted that neither of the reports submitted gave details of the application of many articles of the Covenant. He would like to know, for instance, how the judiciary was organized and what measures were taken to guarantee the independence and irremovability of judges. True, articles 143 and 144 of the new Constitution stipulated that the judiciary was independent from the legislature and the executive and that the President of the Republic was the guarantor of the judiciary's independence, but the Committee should be informed of the specific measures taken to enforce those principles in practice.

83. With regard to elections to the office of President of the Republic, he noted a discrepancy between the provisions of article 66 and those of article 188 of the Constitution, where it was stated on the one hand that the candidate must not have belonged to any political party for at least one year previously and, on the other, that a candidate who had not belonged to any political party for at least the previous nine months was considered to be independent. Again, the provisions of article 56 of the Constitution seemed to mean that, to obtain authorization, political parties must include all sectors of the population among their membership, whereas article 57 prohibited political parties from identifying with a particular ethnic group. He wondered whether that was a contradiction or a form of hypocrisy. Lastly, he noted that no information was given on the procedures for appointing the Prime Minister and other Ministers, and requested detailed information on that point, as well as on the general functioning of political institutions in Burundi.

The public meeting rose at 6.15 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1178th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Monday, 19 October 1992, at 3 p.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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* The summary record of the first part of the meeting appears as document CCPR/C/SR.1178.

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GE.92-18162 (E)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

1. The CHAIRMAN recalled that, at the end of the Committee's forty-fifth session in July 1992, information had been received in Geneva and in other forums elsewhere about serious and massive violations of human rights in the territory of the former Yugoslavia, especially Bosnia and Herzegovina. The Commission on Human Rights had held a special session on 13 and 14 August 1992 to discuss the situation; it had appointed a Special Rapporteur, Mr. Mazowiecki, to conduct an investigation and to submit a report to it by 26 August 1992. At that session, the Commission had had before it the Committee's comments (CCPR/C/79/Add.4) on the third periodic report of Yugoslavia (CCPR/C/52/Add.9) adopted at the end of its forty-fourth session in New York.

2. The International Conference on the former Yugoslavia was also taking place at the Palais des Nations. He had been approached by one of the Conference Co-Chairmen, who had suggested that a purely legal approach to the human rights situation might help in the quest for a political solution to the conflict.

3. As members were aware, he had drafted a decision of the Committee requesting the Governments of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) to submit reports to the Committee. Since the Committee had not been in session, he had submitted the proposal to all the members for approval in fax or telegrams dated 18 September 1992.

4. In the proposal he had pointed out that action taken by the Committee might be helpful in achieving a solution, notwithstanding the legal problems that a decision taken between sessions involved. He had come to the conclusion that the Committee was authorized to request reports on the basis of its previously held position that, despite the legal problems involved in the succession States, there was no reason to presume that successor States would not continue to apply human rights treaties. In any case, the people in the territories of the former Yugoslavia should not be deprived of the benefits deriving from the application of the international instruments relating to human rights. He had said that the request might be related to articles 6, 7, 9 and 10 of the Covenant, and at the suggestion of members replying to the fax, had added article 12, because of its relevance to ethnic cleansing, and article 20, concerning incitement to national or racial hatred.

5. The text of the decision was the following:

"The Human Rights Committee, through its Chairman acting on behalf of and in consultation with the members of the Committee,

- Deeply concerned by recent and current events in the territory of the former Yugoslavia that have affected human rights protected under the International Covenant on Civil and Political Rights;

- Noting that all the peoples within the territory of the former Yugoslavia are entitled to the guarantees of the Covenant;

- Acting under article 40, paragraph 1 (b) of the Covenant:

1. Requests the Government of the [Republic of Croatia] [Federal Republic of Yugoslavia (Serbia and Montenegro)] [Republic of Bosnia-Herzegovina] to submit a short report, as soon as possible and not later than 30 October 1992, on the following issues in respect of persons and events now coming under its jurisdiction:

(a) Measures taken to prevent and combat the policy of "ethnic cleansing" pursued, according to several reports, on the territory of certain parts of the former Yugoslavia, in relation to articles 6 and 12 of the International Covenant on Civil and Political Rights;

(b) Measures taken to prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the International Covenant on Civil and Political Rights;

(c) Measures taken to prevent arbitrary executions, torture and other inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the International Covenant on Civil and Political Rights;

(d) Measures taken to combat advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence, in relation to article 20 of the International Covenant on Civil and Political Rights.

2. Invites the Government of the [Republic of Croatia] [Federal Republic of Yugoslavia (Serbia and Montenegro)] [Republic of Bosnia-Herzegovina] to appear, through their representatives, before the Human Rights Committee during the third week of its forthcoming session (2-4 November 1992);

3. Requests the Secretary-General to bring this decision to the attention of the Government of the [Republic of Croatia] [Federal Republic of Yugoslavia (Serbia and Montenegro)] [Republic of Bosnia-Herzegovina]."

6. All the members had responded by endorsing the proposal, thus authorizing him to act on the Committee's behalf. The decision, which carried a 30 October 1992 deadline, had been forwarded to the States concerned on 7 October 1992. No replies had yet been received, but two days of meeting time, 3 and 4 November 1992, had been set aside for considering them if and when they were submitted.

7. Several issues arose in connection with the decision. First, although it was already operative, the procedure used to arrive at that decision had been rather unusual, and it might be appropriate for it to be confirmed in plenary. Second, the Committee must decide how it would deal with the consideration of the reports if they were submitted or the failure to submit them if they were not. In that connection, there were two legal questions on which it should have a common view, namely: the applicability of the Covenant, and; the complex issue of acts by Bosnian Serbs. Further, at least one political issue, the relationship between the Committee's work and the work of the

Special Rapporteur of the Commission on Human Rights was involved. The Committee should discuss whether its action would reduce the impact of the Special Rapporteur's work. The Committee might also consider making an amendment to its rules of procedure to state that, with the agreement of all the members, it would be possible to request a report through its Chairman when the Committee was not in session.

8. If there was no objection, he would take it that the Committee wished to confirm the decision forwarded by fax or telegram on 18 September 1992.

9. It was so decided.

10. In reply to a comment by Mr. SADI, the CHAIRMAN noted that, in order to help members prepare for the consideration of the reports requested, the report of the Special Rapporteur of the Commission on Human Rights (E/CN.4/1992/S-1/9) as well as that of the Rapporteur of the Conference on Security and Cooperation in Europe (CSCE) on the situation in Bosnia would be distributed shortly. The Special Rapporteur's second report might be available by the end of October, and the Committee would also receive material from NGOs, including a document to be issued by Amnesty International on the situation in Bosnia and Herzegovina.

11. Mr. MULLERSON endorsed the Chairman's initiative, which would help the people in the territory of the former Yugoslavia. Regarding the problem of State succession, the international instruments relating to human rights, besides being inter-State instruments, conferred rights on individuals, who could not be deprived of those rights in the event of State succession. International control was especially necessary in times of turbulence, which was why the Committee always requested reports during states of emergency. He did not think any State, in such circumstances, would say it was not bound by the human rights treaties. In his view, therefore, the Committee's action would be helpful in clarifying the law of succession, at least in the case of human rights treaties.

12. One problem, in his view, was that the Committee was not considering the situation in areas controlled by Bosnian Serbs, who were not successors to the treaties signed by the former Yugoslavia. Since they were belligerents, they were obliged under international law to observe the laws of war, some of which coincided with the articles of the Covenant. Thus, they might be asked to explain how they complied with the Covenant, not as a successor State, but as an authority in control of a territory.

13. Miss CHANET endorsed the Chairman's initiative. She agreed that, although it was not at all certain that the three States concerned would succeed Yugoslavia in respect of obligations under multilateral treaties, the populations currently under their jurisdiction could not be denied the benefits of human rights. The gravity of the situation in the territories of the former Yugoslavia was beyond imagination, and the Committee could not be deterred by legal obstacles. She believed that reference should also be made to articles 2 and 26, because of their importance in connection with ethnic cleansing and since they were routinely flouted, particularly in Croatia.

14. In her view, the issue of State succession did not a priori prevent the Committee from requesting reports under article 40 from the States concerned. However, the obligation for each State to implement the Covenant in its territory was much more debatable, and it would be interesting to discuss it in the Committee and to see how those States reacted. In particular, given the discussion currently taking place in the General Assembly and the Security Council, she wondered whether Serbia could represent the former Yugoslavia. That was a rather thorny legal question.

15. What disturbed her the most was the way in which that matter had been submitted to the Committee. In fact, the Covenant did permit the Committee to request reports under article 40 at any time. Generally, however, it was the Committee itself that made the request, and that had not been the case. Since that fact would become known, it was important to avoid the Committee being considered as having acted at the request of another. That was all the more important since the Committee was not the only body dealing with the matter, as the Chairman had noted, and it was important that its action should not in any way undermine the work of the Special Rapporteur of the Commission on Human Rights. Moreover, the Secretary-General had stated in his report on 12 October 1992 (S/24657) that in establishing the Commission of Experts requested in Security Council resolution 780 (1992), he had taken account of the mandate of the Special Rapporteur in order to avoid duplication of work. The Committee should therefore target its activities very precisely so as not to be in a doubtful position when it examined the three country reports.

16. Mr. MAVROMMATIS commended the Chairman on his initiative and said that the Committee should not allow legal considerations to prevent it from taking action that might prevent human suffering. Nevertheless, it could not sweep certain problems, including that of State succession, under the carpet: it was true that individuals should not be deprived of protection under the Covenant, but only States parties could be required to submit reports.

17. The Committee's problems would begin when Bosnia and Herzegovina and Croatia did not respond to its invitation, for their doing so would be an indication that they considered themselves bound by the Covenant. In the case of the Federal Republic of Yugoslavia, its claim to be the successor State was presumably sufficient to bind it. Another problem concerned the Committee's treatment of successor States in the light of the position adopted by the General Assembly.

18. The Committee should adhere strictly to the letter of the Covenant for the danger was not one of duplication but of triplication: the Committee, the Commission and the Secretary-General were all concerned mainly with the issues of ethnic cleansing and internment. In that connection, when the Security Council adopted its decision concerning a war crimes commission, the Committee should receive copies as part of the facts it would need to consider in conducting its task. The question of the Bosnian Serbs, for example, was one of facts that could be established.

19. Regarding the possibility of a change in the rules of procedure, he considered that the Committee might decide to draft a rule allowing the Chairman to act on its behalf ex post facto.

20. Mr. LALLAH congratulated the Chairman on his initiative; the Committee would almost certainly have been criticized had it not acted. In his view, the Committee should not be too concerned about other United Nations bodies acting within their competence. The Committee, the Special Rapporteur of the Commission on Human Rights and the Secretary-General were all acting under quite separate mandates, and the question of cooperation did not arise. The question, as he saw it, was whether the Committee could make use of the other bodies' work, and he was quite certain it could as it had often done so in the past.

21. Regarding the question of State succession, it would be a delicate matter to establish the current situation as an absolute precedent. In the case at hand, the former Yugoslavia had been a party to the Covenant, but similar situations existed where that had not been so. It might be embarrassing for a country that had signed a treaty and whose territory had been partially taken away to have another Power claim to exercise jurisdiction over it, at least with regard to the treaty.

22. Mr. HERNDL expressed agreement with the Committee's endorsement of the decision sent by fax on 18 September 1992. As all realized, the Committee was starting on a new path, and it must continue to think progressively. If the States concerned submitted reports, not only would the question of State succession be resolved, but a precedent under international law would be established. If reports were not submitted, that would be an indication that the States did not regard themselves as bound by the Covenant, in which case the Committee could not insist.

23. Rather than legal information, the reports would basically contain facts for the Committee to evaluate. Since those facts would, of necessity, be contradictory, the Committee might consider inviting experts, such as the Special Rapporteur of the Commission on Human Rights, to elucidate them. The Committee's views must be sharp, and it should not waste time over legal niceties in its new way of operating.

24. The extent to which the Bosnian Serbs should be associated with the process was a delicate question, which was all the more reason for the Committee to have before it objective information such as that provided by the Commission Special Rapporteur. The essential goal was to establish the facts, for once the Committee had chosen to involve itself, it must live up to its new approach.

25. Mr. SADI noted that members appeared to agree on the need for a change in the rules of procedure. On a point of organization, in his view all three parties should appear at the same meeting. Although that sounded unorthodox, the adversarial system might facilitate treatment of the situation. He agreed with Mr. Mavrommatis that, since recognition of the Federal Republic of Yugoslavia had been withdrawn, the question arose how to deal with that country.

26. Mrs. HIGGINS said that she did not share the view that the Committee should not allow legal considerations to prevent it from attempting to deal with the situation. The Committee was in a new area, but not one that was prohibited by its rules or incompatible with its objectives as far as

procedure was concerned. As to State succession, she shared the view that the Committee could assist in clarifying the uncertainty in international law over that question. Regarding Serbia, it was essential that no member should say anything that might be construed as treating Serbia and Montenegro as the continuity of Yugoslavia, both because of the General Assembly stance and because to do so would be in contradiction with the stated opinion of the countries of the Conference on Security and Cooperation in Europe. All three States must be treated in the same way, i.e. as States which at the moment had the welfare of human beings in their hands; by virtue of that fact of State succession, the Committee desired a dialogue.

27. Unlike Mr. Herndl, she believed that the Committee was least good at making decisions by itself based on facts. What it was best at, and what it should do, was take the information available and make clear findings as to whether violations of the Covenant had occurred. She also agreed with Mr. Lallah that there was no cause for concern at other bodies doing their job.

28. The Co-Chairman of the International Conference on Former Yugoslavia had probably hoped that the Committee would indicate in legal terms whether the situation in the former Yugoslavia provided a basis for prosecution of war crimes. She did not think that was the Committee's task. There were no doubt points of contact, in that massive violations of some of the articles of the Covenant might constitute war crimes under international law and thus be useful to others later; the Committee's task was to act under the Covenant.

29. Mr. PRADO VALLEJO thanked the Chairman for his initiative and for taking up his own suggestion that article 20 of the Covenant should be mentioned. The Committee could not remain passive in situations of genocide.

30. As to whether the countries of the former Yugoslavia were obliged to respect the Covenant, he believed the Committee had already taken an affirmative position in the second preambular paragraph of the decision of 18 September 1992. Personally, he had some doubts as to whether the three States, especially the Federal Republic of Yugoslavia, would enter into a dialogue with the Committee, although he hoped that they would. The point at issue, however, was what the Committee would do if such a dialogue took place, and what the scope of its concluding comments would be.

31. The obligation to respect human rights was a universal one that transcended treaties. Regarding State succession, the Committee's action showed that it was helping international law to evolve in such a way that the Covenant would remain in force despite the division of a State. He recalled that, when the Committee had considered the report on Hong Kong, it had asked the delegation of the United Kingdom to do all it could to ensure that the Covenant remained in force after Hong Kong was transferred to the jurisdiction of China, despite the fact that China had not ratified the Covenant.

32. As for the Serbian insurgents in Croatia and Bosnia and Herzegovina, they were acting as instruments of the Belgrade Government. They were violating fundamental rights protected by the Covenant and in his view were nothing less than instruments of civil war.

33. He considered that the work of the Special Rapporteur of the Commission on Human Rights did not conflict with that of the Committee, but complemented it. With regard to the question of amending the rules of procedure, he agreed that the Committee should formulate in words the action it had already taken.

34. Mr. AGUILAR expressed agreement with Mrs. Higgins about legal considerations. By its decision of 18 September 1992 the Committee had already begun to make law, and in a revolutionary manner.

35. As to its position towards Serbia and Montenegro, the Committee should bear in mind the clear decision taken by the international community, which included States parties to the Covenant. As Mrs. Higgins had said, Serbia and Montenegro should be treated from the point of view of State succession, but on a strictly equal basis with Bosnia and Herzegovina and Croatia. In fact, he questioned the use of the term "Federal Republic of Yugoslavia".

36. He was less concerned with whether the three States agreed to the Committee's request, since in any event the Committee could not turn back. Regarding the proposal to amend the Committee's rules of procedure, he agreed with those who had pointed out that the change had already been made; the Committee would have to consider a number of other urgent changes in its procedures during the current session.

37. The CHAIRMAN said that he had used the formula "Federal Republic of Yugoslavia (Serbia and Montenegro)" in the decision of 18 September 1992 because that was the expression used in Security Council resolutions.

38. Mr. WENNERGREN commended the Chairman's initiative. He agreed with Mrs. Higgins and Mr. Aguilar that the three States should be treated equally since they had all inherited the former Yugoslavia's obligations under the Covenant. The situation regarding the Bosnian Serbs was perhaps not as complex as it appeared. The Serbs in Bosnia represented a rebellious faction for which Bosnia did not have to take responsibility, despite the fact that they were under its jurisdiction. Similar situations existed in many other countries.

39. He disagreed with Mr. Herndl's view that if the States did not respond to the Committee's request, it could not insist. In fact, the Committee should continue its action by sending reminders and trying to induce those States, through its words and authority, to respond to its request.

40. Amending the Committee's rules of procedure might be difficult. He did not see where such a rule would be placed, and no draft had been produced. It might be better to adopt a case-by-case approach. The Committee had established a precedent, but there was no need to formalize it.

41. Mr. ANDO thanked the Chairman for his initiative. Regarding State succession, he agreed with those speakers who had pointed out that the Committee had made its attitude clear in the second preambular paragraph of the decision of 18 September 1992. He also agreed with those speakers who had emphasized the need for the Committee to remain within the bounds of the

Covenant, and not to give the impression that its main mission was to consolidate facts. He was not opposed to inviting an expert to come before the Committee, but it should not lose sight of its mission.

42. He agreed with those speakers who had stressed that the Committee should not give the impression that it regarded Serbia and Montenegro as the successor to Yugoslavia. However, it must be careful not to be inconsistent with its previous action in inviting Yugoslavia to its forty-fourth session.

43. Regarding the rules of procedure, he said that since the Committee had taken action, it should reflect on its rules of procedure, but he agreed with Mr. Wennergren that formal revision might not be absolutely necessary.

44. Mr. SERRANO CALDERA endorsed the Chairman's initiative. The Committee had taken an important step that might lead to innovations in international law; however, its action must always be based on the Covenant. Regarding State succession, he agreed that the three States in question should be given equal treatment. If they replied to the Committee's invitation, they would be assuming a legal position, and one of the Committee's concerns would be eliminated. In any event, State succession should be viewed as a matter of the acquired rights of the population of the State that had ratified the Covenant, which were not diluted when a State was divided.

45. Regarding coordination with the Special Rapporteur of the Commission on Human Rights, he agreed with Mr. Lallah that the Committee was an autonomous body whose mandate derived from the Covenant. However, that did not prevent it from establishing a mechanism for coordination with the Special Rapporteur that might help it strengthen its own judgements.

46. Mrs. HIGGINS said that Mr. Prado Vallejo had raised an important point concerning the Committee's handling of the concluding phases of the consideration of the reports. She hoped that it would reach very precise conclusions, looking at issues of justification and liability above all. In that connection, she would like to know whether there would be a separate rapporteur for each State's report.

47. The CHAIRMAN thanked the members for their support and kind words to him. All appeared to agree that the issue of State succession was not a problem at the moment. As has already been pointed out, the issue was already addressed in the second preambular paragraph of the decision of 18 September 1992, but he had felt it would be useful to have an exchange of views on a difficult problem of international law. The exchange had also enabled the Committee to consider the matter of continuity, and everyone had agreed that the three States should be dealt with on an equal basis. He had deliberately avoided mentioning any previous action by the Committee with regard to Yugoslavia in order to avoid giving the impression that the current activity was a follow-up to the Committee's consideration of the third periodic report of Yugoslavia (CCPR/C/52/Add.9) in April 1992.

48. Replying to a point raised by Miss Chanet, he said he had not included a reference to articles 2 and 26 of the Covenant for two reasons; the first was that the decision should not be too long and the second was that the substance of those articles, especially article 2, was implicit in all the points concerning which the Committee was asking for information.

49. Relations with other bodies did not seem to be cause for concern; the Committee had a very specific mandate and other bodies established facts rather than legal evaluations. In a number of previous cases, such as that of Afghanistan, the Committee had made use of the reports of special rapporteurs of the Commission on Human Rights and had inserted that information into the legal framework of the Covenant. The points that the Committee was considering were also addressed by the Commission Special Rapporteur in his report on the situation in the former Yugoslavia (E/CN.4/1992/S-1/9), which he had read before drawing up the list of issues.

50. The Committee was breaking new ground in that it was exercising its competence in attempting to monitor emergency situations, which it had been criticized in the past for failing to do. Recent developments in the international law situation had now made it possible for it to do so.

51. The majority of the Committee seemed to feel it would be advisable to draft a new rule of procedure. He would therefore prepare a draft for discussion later on. Regarding the concluding phases, he wondered whether Mr. Prado Vallejo had any suggestions in that regard.

52. Mr. PRADO VALLEJO said that Mrs. Higgins had raised a valid point, but that it might be preferable to see whether the States concerned responded to the Committee's invitation before appointing a rapporteur. In any event there should be only one rapporteur for the three States, in order to avoid any contradictions.

53. Mr. HERNDL said it was obvious that the Committee's actions should at all times remain within the bounds of the Covenant. However, it would need to have some certainty concerning the facts, which in the case at hand were more important than in other reports which contained more legal information. It was for that reason that he had suggested inviting the Special Rapporteur of the Commission on Human Rights. That would open a new path for the Committee in ascertaining facts regarding situations, and he did not think that the members should dismiss the suggestion out of hand.

54. Miss CHANET agreed with Mr. Herndl that the Committee must stay within the context of the Covenant; however, the situation it was examining was an unprecedented one, and the Committee would require information in order to conduct its work. The usual NGOs had informed the Committee that they had very little information of the type they usually provided. The findings of the Special Rapporteur of the Commission on Human Rights would be valuable; unfortunately, however, he had not visited the civilian internment camps and did not even have a list of those camps. Perhaps the ICRC could help in that respect. She trusted that, in addition to the report of the Rapporteur of CSCE, the secretariat would obtain all available information on the violence in the former Yugoslavia.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

55. The CHAIRMAN read out the names of the rapporteurs entrusted with preparing draft concluding comments on the reports to be considered during the current session.

56. If there was no objection, he would take it that the Committee endorsed the appointment of the rapporteurs.

57. It was so decided.

58. Mr. PRADO VALLEJO, referring to the complicated situation of human rights in states of emergency, drew attention to a recent development that would have repercussions throughout Latin America. Peru, wishing to restore the death penalty, had recently denounced the Inter-American Convention on Human Rights, despite the fact that the Convention itself did not provide for such an act. That situation had given rise to debate in Latin America, especially among the signatory countries of the Convention, on whether a human rights treaty could be denounced when it contained no provision to that effect.

59. Mrs. HIGGINS said that the extended meeting had helped to clarify ideas relevant to the Committee's work. She proposed that the Committee should set aside the early evening of the first day of each session to deal with any pressing problems and to exchange views.

60. The CHAIRMAN agreed that the Committee was free to decide to use the first evening of its sessions to consider issues that might have an impact on the work on the session. In the present instance, all the issues discussed were in line with those raised at the recent Meeting of Chairpersons of Human Rights Treaty Bodies.

61. One last question to be settled was the issue of requests by countries to present video tapes or films in connection with the consideration of their reports, as Peru had done at the forty-fifth session. He recalled that a proposal had been made at that session to ask the Working Group to look into that question and to make recommendations to the Committee, including a possible amendment of its rules of procedure. However, it had subsequently been decided to consider the issue at the current session.

62. Mr. LALLAH said that as a matter of principle the Committee should not allow the showing of videos at its sessions, because videos were open to abuse that would be beyond the control of the Chairman. The spirit of the Committee's rules of procedure was clear: reports should be in writing, supported orally by the members of the delegation concerned.

63. The CHAIRMAN replied that it might nevertheless be advisable to amend the rules of procedure to stipulate that only written reports would be considered. If a delegation wished to show a video tape, it might do so outside the times scheduled for the Committee's meetings; members could attend on an optional basis.

64. If there was no objection, he would take it that the members were in agreement with that procedure.

65. It was so decided.

66. The CHAIRMAN invited members to consider the possibility of a further change in the rules of procedure to provide for the handling of urgent matters that arose when the special rapporteurs were absent. Alternate special rapporteurs might be appointed or the Chairman might be empowered to replace the special rapporteur in urgent situations. He would submit a draft rule to that effect for the consideration of the Committee.

The meeting rose at 8.45 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1179th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 October 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR URBINA

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GE.92-18016 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Senegal (CCPR/C/64/Add.5)

1. At the invitation of the Chairman, Mr. Fofana and Mr. Dia (Senegal) took places at the Committee table.

2. Mr. FOFANA (Senegal), introducing the third periodic report of Senegal (CCPR/C/64/Add.5), said that his country was convinced that human rights would be a predominant issue throughout the coming century. Having learned from experience of two world wars in the first half of the twentieth century that armed confrontation could never provide a basis for international relations, mankind had organized itself into an international community and decided to make human rights its instrument for the restoration and maintenance of world peace and security. Following the adoption of the Universal Declaration of Human Rights, the international community had gone on to adopt the two International Covenants and the Optional Protocol as well as later instruments dealing with discrimination in all its forms and covering in particular the specific rights of women and children. All those instruments had been a major source of inspiration to Senegal on its accession to international sovereignty, when it had resolved to make the primacy of the law the foundation of the State. The first Constitution had been adopted in 1960 as the sole legal framework for determining relations between the public authorities and individuals, on the one hand, and between the Senegalese State and other institutions on the other. To that legal framework had been added three public institutions: an executive power responsible for establishing national and international policy; a legislative power to be the depositary of national sovereignty; and an independent judicial power responsible for determining the law. The primacy of the law was also respected in the field of promotion and protection of human rights. Human rights were not merely referred to in the preamble to the Constitution but were defined systematically in articles 6-20 and could be evoked and defended before all appropriate bodies.

3. To better guarantee such primacy of the law in practice, the public authorities had established an independent judiciary, consisting of a Higher Council of the Judiciary and a Supreme Court. From 30 May 1992, it had also comprised a Constitutional Council, a Council of State, a Court of Cassation and other courts and tribunals. The Mediator of the Republic, established under Act 91-14 of 11 February 1991, was also concerned to ensure that the public authorities were subject to the law. The first report of the new institution had been well received both by the administration, whose attention had been drawn to cases of non-recognition or violation of human rights, and by the general public, from whom more than 3,000 requests for assistance had been received.

4. Senegal's respect for the primacy of the law had led to the preparation of a large body of legislation designed to ensure that all matters affecting individuals were subject to legislative provisions and that human rights were

promoted and protected. That had led to the establishment in 1970 of a Senegalese Human Rights Committee to plan and coordinate Government policy and disseminate information on human rights. The Committee had been reorganized in 1978 and 1990 to adapt it to the national and international situation with respect to protection and promotion of human rights. The public authorities had encouraged the establishment of competent non-governmental organizations, about 10 of which had been formed and enjoyed the support of the people and Government.

5. The International Covenant on Civil and Political Rights contained provisions that were binding on States parties. The importance of the right to self-determination had been recognized in article 1 of the two International Covenants on Human Rights. Senegal had defended that right by playing an important role in the wars of liberation of colonial peoples and defending the right to self-determination of the South African, Namibian, Western Saharan, Palestinian and Kuwaiti peoples. Among the many and varied rights of the individual covered in detail in the Covenant, the rights to life, physical integrity and security of person were fundamental. The Government supported the principle that no one should be deprived of life by law, and there had been only two cases of capital punishment in Senegal throughout its existence. The death penalty still theoretically existed but had been effectively abolished in practice. The use of firearms by the forces of law and order was closely regulated by Act 70-37 of 13 October 1970 and Act 74-13 of 24 June 1971 amending article 92 of the Penal Code with respect to the maintenance or restoration of public order. Violation of those texts by such forces carried disciplinary and penal sanctions.

6. Physical integrity was specially protected in Senegal. Torture or other cruel, inhuman or degrading treatment or punishment committed by members of the forces of law and order were subject to severe penalties, as illustrated in the report. The Code of Penal Procedure had been amended in 1985 to strengthen measures to promote individual freedoms. Decisions of the judicial police and of examining magistrates in that area were strictly supervised. Officials who ordered remand in custody and failed to respect their obligations could be disowned and be subject to civil or penal proceedings. The detention process could be monitored by the defence counsel.

7. The powers of the examining magistrate to issue a detention order were limited by article 127 bis of the text, taking account of the applicable penalty and the place of residence of the accused person, whether within or outside the area of jurisdiction of the court. For example, if the person concerned could incur a penalty of up to two years and lived within the jurisdiction of the court, he could not be placed in detention, but if he lived outside that area he could be detained for a period not exceeding five days, and if the case was not taken up within that period he would be released. The examining magistrate then had six months in which to apply for renewal of the case, failing which the head of the penal establishment must release the accused person without reference to the judge.

8. Lastly, there was judicial control in the Code of Penal Procedure, which again proved that detention was the exception and freedom the rule. The right

of a person to live where he chose, to leave his place of residence at any time and to return unimpeded was also guaranteed by the Constitution and the law.

9. There were four aspects to the constitutional right to equality before the law in Senegal: the restrictive notion of the equality before the law of all citizens without distinction as to origin, race, sex or religion (art. 4); the very broad concept of equality of all human beings before the law (art. 7 (1)); the special equality between men and women before the law (art. 7 (2)); and equality excluding any privilege based on birth or family (art. 7 (4)). A further right was that of non-discriminatory treatment of the individual. Discrimination and distinction or exclusion had been viewed as a real threat to the nation because of its colonial past and had been condemned and made punishable from the time of the first Constitution. Following its accession to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid, the public authorities had issued Act 81-77 of 1 December 1991 providing heavy penalties for those responsible for any acts of discrimination.

10. The basic human right to bring any case involving a violated right before any court was also guaranteed. Since many citizens lacked the means to do so, provision had been made for legal assistance. Under an Act based on the former colonial law, such assistance was provided free to anyone who could not afford it.

11. The principle of presumption of innocence was enshrined in the Constitution, but was difficult to apply in practice because of the connection between charge and culpability. The authorities were considering the possibility of amending the Penal Code as appropriate.

12. The right to a defence was also recognized by the Constitution and there, too, legal assistance could be provided. Application could be made for a case to be reviewed by a higher court. That right had not been open to persons in respect of the State Security Court but that Court had been abolished by Act 92-31 of 4 June 1992 on the ground that it had impeded the democratic processes of the State.

13. The right to trial within a reasonable period was also guaranteed. The public authorities had liberalized the use of the procedure governing flagrante delicto and had limited the number of referrals to other courts. The right to be informed of the grounds for a charge was also guaranteed, as was the right to be given the necessary time in which to prepare a defence (arts. 101 and 385 of the Code of Penal Procedure). The same applied to the right to call and interrogate witnesses and the right of a person not to testify against himself. Provision was made for special treatment for juveniles, for whom a wide range of protection measures was provided. The right to compensation in cases of arbitrary or illegal detention was not recognized in Senegalese legislation. The extinction of public proceedings once the res judicata stage had been reached was another important safeguard for the individual. The legality of offences and penalties was provided for by article 6 of the Constitution. The right to legal personality and its protection was also

covered by the Constitution (art. 6 (3)). The Family Code determined the constituent elements of such legal personality and the measures for their protection. The right to privacy, covering the inviolability of the home and the confidentiality of correspondence, was protected by law. Freedom of conscience and religion were guaranteed, as shown by the harmonious coexistence of the various revealed religions and by the recent visit of a religious leader to a country in which 90 per cent of the population was Muslim. Freedom of expression was also guaranteed, as demonstrated by the large number of political parties and press organs, as was the right to freedom of association; peaceful meetings could be held whenever desired. Incitement to hatred or war was not permitted. A recently established Radio and Television Council guaranteed freedom of expression through the media.

14. The right of all citizens to participate in public affairs, to vote and to be elected by universal suffrage and secret ballot allowed for the free expression of the will of electors and equal opportunities to accede to public office. The recent reform of the Electoral Code to provide for free, open and incontestable elections and to limit the presidential mandate to a single renewable term showed how those rights were guaranteed. Every citizen had the right to run for the office of President of the Republic without the backing of any political party. That was a major innovation. The Supreme Council for Radio and Television played a leading role in the presidential electoral procedure and in allowing the use of the media by parties and candidates.

15. Economic, social and cultural rights were also of concern to the public authorities. Trade union freedom was guaranteed under the Constitution and the Labour Code, which permitted all persons to form trade unions and take part in their activities. About 10 such unions existed in Senegal. The family was recognized as constituting the natural basis for all human communication. A Family Code regulated all aspects of the family, protected the freedom of marriage and divorce and free consent to the marriage and placed the child at the centre of protection. Other texts, such as the Penal Code and the Code of Penal Procedure, also contained important provisions for the protection of children. A Ministry with sole responsibility for the rights of women, children and the family had been established in 1991. Senegal had ratified the Convention on the Rights of the Child in November 1991.

16. At the international level, the primacy of the law, particularly in the human rights field, was viewed by Senegal as the basis for foreign policy, with the further objectives of the fulfilment of the right of peoples to self-determination and the realization of African unity. It had acceded to 26 international human rights instruments which, under article 79 of the Constitution, had primacy over national laws, and which had been integrated into its legislation and could be invoked before all Senegalese courts.

17. On its accession to international sovereignty, the Republic of Senegal had rapidly become aware of the danger of division of the African continent into mini-States having no chance of survival. In drawing up the first Constitution, therefore, the public authorities had resolved, in the preamble, that they would spare no effort to secure African unity. Over three decades, all efforts of Senegalese diplomacy had been centred on such unity, with the OAU as the

regional structure and with a number of subregional organizations, further reinforced by the appointment of a Minister for African Integration.

18. It could thus be seen that the promotion and protection of human rights and the rights of peoples was a tangible reality forming part of the daily life of the Senegalese people. His delegation would take note of all comments and questions that might be raised and would remain at the Committee's disposal.

19. The CHAIRMAN invited the delegation of Senegal to reply to the questions in section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented, self-determination, non-discrimination, equality of the sexes, protection of the family and rights of persons belonging to minorities (arts. 1, 2, 3, 23, 24, 26, and 27)

(a) Please clarify whether the Optional Protocol has been published in the Journal Officiel.

(b) Can an individual invoke the provisions of the Covenant before the Senegalese authorities, especially the courts?

(c) Please comment further on the functions and activities of the Senegalese Human Rights Committee, mentioned in paragraph 77 of the report.

(d) What measures have been taken to publicize the Covenant and the Optional Protocol and create public awareness about the rights contained therein?

(e) Please clarify whether the Constitution has been amended to include all the grounds of discrimination covered in the Covenant, as announced during the consideration of the second periodic report.

(f) With reference to paragraph 13 of the report please clarify whether specific legislative, administrative and judicial arrangements have been made by the Government of Senegal to prevent racial discrimination.

(g) What is the meaning of the sentence in paragraph 106 of the report that "with such a repressive body of laws, the questions of distinctions in general and minorities in particular can neither coexist with Senegalese law nor develop in such an atmosphere"?

(h) Please clarify the compatibility with the Covenant of articles 152 to 154 of the Family Code, which grant special rights to men, and whether, as announced during the consideration of the second periodic report, a commission has been set up to study family law matters.

(i) Please clarify what powers are vested in the President of the Republic in the face of certain serious and imminent dangers to the

mation, under article 47 of the Constitution, and what rights can be suspended in such a situation? (See para. 30 of the report.)"

20. Mr. FOFANA (Senegal), referring to question (a), said that the Optional Protocol had been published in the Journal Officiel in 1978, following its ratification in 1977 by Act 77-73.

21. On question (b), anyone standing trial in Senegal could invoke the provisions of the Covenant before the authorities. Once ratified, an international instrument became part of Senegalese legislation.

22. In reply to question (c), the Senegalese Human Rights Committee had been established in 1970 as a demonstration of Senegal's commitment to United Nations ideals. It was responsible for considering all general questions concerning the protection and promotion of human rights and for proposing appropriate measures in that field to the public authorities. It was also required to coordinate the activities of non-governmental organizations in the promotion and protection of human rights; to prepare and ensure the implementation of a programme of human rights activities; to collate international human rights documentation in cooperation with non-governmental organizations; to liaise with the relevant United Nations bodies and non-governmental organizations in other countries; and to disseminate the Universal Declaration of Human Rights and other relevant instruments. The Committee acted as an intermediary between the public authorities and the non-governmental organizations, which were required to transmit any relevant studies to it for information.

23. On question (d), ever since Senegal had ratified the Covenant and the Optional Protocol, those instruments had been a focus of the activities of its Human Rights Committee, which broadcast a weekly radio programme on the subject. Non-governmental human rights organizations also helped to disseminate information in lectures and discussions. The Constitution, which contained all the relevant provisions of those instruments, was publicized in schools and universities with the assistance of the Senegalese Human Rights Committee.

24. With respect to question (e), the Constitution had not been amended to include all the grounds of discrimination covered in the Covenant, but that omission was remedied by Act 81-77 of 1981, whereby all cases of discrimination were punishable by imprisonment.

25. On question (f), the specific measures taken to prevent racial discrimination had included the establishment of the Université des mutants ("Career-changers' University"), since it was through such institutions that fraternal links could be created between peoples. The Human Rights University in Dakar provided courses on human rights and on the elimination of discrimination. Ministers of religion in mosques, temples and churches preached tolerance and brotherhood, and State radio and television were also used to propagate such principles.

26. The phrase quoted in paragraph (g) of the list of issues from paragraph 106 of the report meant that the penalties provided by law constituted a sufficient deterrent against any form of distinction.

27. Concerning question (h), article 152 of the Family Code established the husband as head of the family; that was simply a function he was called on to perform in the interests of the family as a whole, and especially of his wife and children. Article 153 provided that the husband should determine the residence of the household. That, again, was merely the function he was required to perform. If, however, the wife believed that her husband's choice of residence posed a danger to the health or morals of the family, she was entitled to apply to the departmental judge to accord her separate residence. That article could not, therefore, be regarded as discriminatory. It should also be noted that article 13 (1) of the Family Code had earlier fixed the legal domicile of the wife as that of the husband, enabling the latter to take action against his wife in the event of her desertion of the matrimonial home. That offence had been replaced in the Penal Code by provisions concerning desertion of the family (art. 332) which were equally applicable to both spouses. Act 89-01 of January 1989 had subsequently deleted article 13 (1) from the Family Code and had also abrogated article 154.

28. With regard to question (i), concerning the special powers vested in the President of the Republic, article 47 of the Constitution had been reproduced from article 16 of the French Constitution with the aim of enabling the Head of State to take measures in the face of certain serious and imminent dangers to the nation. Those measures, unfortunately, were not defined by the Constitution or by any special laws, but the article in question had never actually been applied in Senegal. Moreover, it had been realized that article 58 of the Constitution provided adequate means to regulate states of emergency. He was sure, however, that had the provisions of article 47 been invoked, that would have been done only in very grave situations and would not have endangered human rights.

29. Mr. LALLAH commended the State party on its excellent report and its major efforts in the field of human rights. He had only two comments to make, the first of which related to the issue of equality between men and women, and in particular to the provisions of articles 152-154 of the Family Code. The approach of the representative of the State party on that subject differed strikingly from that taken by the delegation which had spoken during the consideration of the second periodic report of Senegal, when Mr. Ndiaye had, moreover, made a long statement arguing that both polygamy and absence of discrimination between men and women were a natural part of African society. It had been suggested on that earlier occasion that articles 152-154 of the Family Code should be reviewed in the light of article 3 of the Covenant. He was pleased to note that article 154 of the Code had since been deleted. He would, however, like to know whether polygamy still existed and, if so, how it could be reconciled with the provisions of the Covenant.

30. His second point concerned paragraph 27 of the report, which referred to the disturbances in 1988 and 1989, when states of emergency had been proclaimed. He wondered whether the Government of Senegal had taken due note of the provisions of article 4 (2) of the Covenant - a point that was particularly important in view of the State party's obligations under article 41. While he welcomed the clarification just made concerning the powers vested in the President of the Republic under article 47 of the Constitution, he wished to

point out that the provisions of article 4 of the Covenant were very strict. Even if the powers in question had never been exercised, they existed in the letter of the Constitution. Might it not be possible to enact legislation limiting the derogations provided for under article 47 of the Constitution so as to ensure conformity with the Covenant?

31. Mr. EL SHAFEI joined in welcoming the representative of the State party. The high standing of the delegation and its valuable presentation reflected Senegal's well-known active role in the protection and promotion of human rights. The country's third periodic report provided a great deal of information on legislation that had been enacted, although it could have said more about how the provisions of the Covenant were given effect in everyday life. Additional information would be appreciated on how the general public and the legal profession were made aware of the rights and remedies provided for under the Covenant and the Optional Protocol.

32. Concerning the reaffirmation, in article 79 of the Constitution, of the primacy of international obligations over national legislation (para. 5 of the report), he noted that the representative of the State party had replied to the question whether individuals could invoke the provisions of the Covenant before the courts. However, in that regard, it might be useful if the delegation could cite actual court decisions or sentences.

33. He would also welcome clarification regarding whether the provisions on non-discrimination contained in articles 2 and 26 of the Covenant were being fully applied, particularly in view of the claims of some humanitarian organizations - described as groundless in paragraph 15 of the report - that the unrest in southern Senegal was the result of racial or ethnic discrimination and that the people of the region were ignored by the public authorities, which were interested only in the economic and social development of the north, west and centre of the country. The issue should perhaps also be considered in the light of the self-determination provisions of article 1 of the Covenant. It would, of course, be remembered that prior to independence the southern part of the country had already posed problems for the colonial authorities. Lastly, the Constitution itself, in its prohibition of the formation of political parties based on religious, ethnic or other such grounds, effectively recognized the problem of ethnicity.

34. Mr. Aguilar Urbina took the Chair.

35. Mrs. HIGGINS said that she wished to extend the warmest welcome to the delegation of Senegal and to commend the State party on the prompt submission and quality of its report, which largely followed the Committee's guidelines. She did, however, share Mr. El Shafei's view that, while formally excellent, the report was somewhat lacking in substance with regard to what was actually happening in the country and provided little cross-referencing between legal provisions and practical problems.

36. From paragraph 27 of the report, she noted that states of emergency had been proclaimed on more than one occasion in the recent past, yet no notification appeared to have been given by the State party to the effect that

it had availed itself of the right of derogation provided for in article 4 (3) of the Covenant. To be sure, some oral information had been provided to the Human Rights Committee on the 1988 emergency, and it was also gratifying to note that a large number of police reports concerning that period had been invalidated by the courts (para. 23 of the report). All the same, if the application of provisions of the Covenant had been suspended, it was puzzling that no communication on the matter had been received.

37. One other, more general question she wished to raise was prompted by the statement in paragraph 33 of the report that amnesty was a feature of the Senegalese legal system. Did amnesty mean permitting persons convicted of offences to be released or did it imply that complaints might not be pursued against public servants accused of certain acts?

38. Mr. Pocar resumed the Chair.

39. Mr. MÜLLERSON welcomed the third periodic report, which had been prepared in accordance with the Committee's guidelines, and commended the efforts of the State party in the field of the protection and promotion of human rights. The commitment of Senegalese public institutions to the fundamental principle of protecting human rights was referred to specifically in paragraph 23 of the report, which stated that failure by the forces of law and order to respect the legal provisions concerning states of emergency was construed as a serious breach of procedure. In that connection, he wished to know what penalties could be imposed on those found guilty of procedural violations and what measures were provided to remedy the wrongs committed by public officials.

40. Regarding states of emergency and siege, like Mrs. Higgins he wondered why no information had been submitted, through the intermediary of the Secretary-General of the United Nations, on any derogations under article 4 (3) of the Covenant. He was also puzzled by the reference in paragraph 27 of the report to article 53 of the Constitution, which in the version he had consulted did not deal with emergency matters at all. Article 47 of the Constitution, however, did contain very extensive emergency provisions which in his view were much broader than those envisaged by article 4 of the Covenant. On a related matter, he wondered what was meant by the term "requisitioning of persons" in paragraph 29 of the report.

41. In the context of article 27 of the Covenant, paragraphs 92 and 104 of the report stated that there were no problems regarding the rights of minorities in Senegal. Paragraph 105 indicated that there were several social groups which spoke different languages, although there was "no such thing as the domination of one language over the other". Yet as he understood the definition of a minority, it was not merely a group dominated by another group, but rather a group that felt different from other members of the population - on ethnic or religious grounds, for example. There was no country in the world that did not have minorities. He would like to know how the Government of Senegal characterized the groups referred to in paragraph 105, if not as minorities.

42. Mr. SADI said that Senegal was a major force for the promotion and protection of human rights in Africa and throughout the world. He welcomed the

delegation's oral introduction of the report, which was informative and useful, even though it did not necessarily meet all the Committee's expectations.

43. He would like to hear examples of the primacy of the Covenant over national legislation, as mentioned in paragraph 5.

44. Paragraphs 12 and 16 of the report indicated that there was no discrimination on the basis of origin, race, religion or sex. Had the other criteria mentioned in article 2 of the Covenant - language, property, political or other opinion, etc. - been intentionally omitted?

45. The report gave examples of how discrimination between the sexes had been eliminated in the legislation, but said nothing about affirmative action to increase the role of women in public and private functions. It was not enough to adopt laws against discrimination: it was also necessary to translate legal concepts into realities. It would be useful to know, for example, how many women members there were in the country's legislative bodies and decision-making organs and how many women were heads of private companies.

46. Paragraph 9 outlined Senegal's position on the right to self-determination in terms of support for the efforts of peoples to achieve independence. He would like to know, however, how Senegal regarded expressions of self-determination on the domestic front - periodic, democratic elections, for example - once a people had achieved independence.

47. Miss CHANET welcomed the presence of a high-level delegation from Senegal, attesting to the country's interest in pursuing its cooperation with the Committee.

48. She would appreciate further information on the role of the Mediator of the Republic, an institution established only recently. Had there been any experience yet with its workings?

49. She would also welcome additional information on states of emergency: did the non-derogable rights mentioned in article 4 (2) of the Covenant remain unrestricted under such circumstances? What rights, specifically, were suspended? The advisory control commission mentioned in paragraph 28 of the report seemed at first glance to be a good initiative. However, she would welcome more information on that body, including its composition and its specific role.

50. Article 47 of the Senegalese Constitution had been modelled on article 16 of the French Constitution. Because of the broad powers vested in the President under that article, the French Government had made a reservation with regard to article 4 of the Covenant. However, the Senegalese Government had not made a similar reservation, and she would therefore like to know its views on the compatibility with article 4 of the Covenant of the presidential powers conferred by article 47 of the Constitution.

51. Paragraph 20 of the report described measures to deal with disruption of "the peace" by "a mob or assembly of armed or unarmed individuals". She would

be interested to know how "unarmed individuals" could threaten "the peace", and how "the peace" ("la tranquillité publique") differed from public order ("l'ordre public").

52. She associated herself with Mr. Müllerson's question about the treatment of minorities. Paragraph 106 of the report seemed to imply that the existence of a repressive body of laws was sufficient to protect minorities, when in fact article 27 of the Covenant called for positive measures to ensure minority rights.

53. Finally, on the question of family rights, she noted that articles 152 and 153 of the Family Code envisaged an equitable and functional distribution of the tasks of partners in a marriage, but failed to provide for equality of rights between spouses, as required under article 23 (4) of the Covenant. Since the Government had already made such great strides in enhancing the status of women, could it not envisage taking a further step to ensure the more equitable sharing of rights and responsibilities between spouses?

54. Mr. WENNERGREN said that the third periodic report of Senegal usefully supplemented the second periodic report to give a comprehensive picture of the human rights situation in the country.

55. Like Miss Chanet, he wished to learn more about the role of the Mediator of the Republic. He inquired how large a staff the Mediator had and in what fields staff specialized - legal affairs, investigative techniques, etc. Would the Mediator, like ombudsmen in other countries, deal primarily with complaints from members of the National Assembly rather than with those of private individuals?

56. In the introductory statement, the Senegalese representative had mentioned the establishment of a Constitutional Council. Article 82 of the Constitution indicated that the Supreme Court would decide the constitutionality of laws. He would therefore appreciate clarification as to how the work of the Constitutional Council and the Supreme Court would be coordinated, and what role the Constitutional Council would play in general.

57. In the light of article 81 of the Constitution ("The judicial power shall be the guardian of the rights and freedoms defined by the Constitution and the law"), he wished to know how the system of judicial review was organized. When a citizen deemed his rights to have been violated, how could he ensure that the problem was brought up for judicial review?

58. Mr. PRADO VALLEJO noted that the Government of Senegal had always cooperated fully with the Committee. The third periodic report gave comprehensive information about legislation but left questions unanswered about actual practice regarding observance of human rights under the Covenant. Nevertheless, it was noteworthy for its candid references to criticism of Senegal by humanitarian organizations, a frankness that was not always discernible in State party reports.

59. He would like more information about the specific rights subjected to limitations during states of emergency. Were effective remedies available to citizens who considered their fundamental rights to have been violated? Did the remedy of habeas corpus apply during states of emergency? He would also appreciate further information on the functioning and powers of the advisory control commission mentioned in paragraph 28 of the report.

60. The statement in paragraph 29 that requisitioning could apply to services and individuals required to meet the needs of the country should be elucidated. What regime covered the institution of requisitioning?

61. Noting that amnesties had frequently been proclaimed in Senegal, he inquired what their scope was. If they tended to interfere with the investigation of human rights violations - for example, of cases of police torture and abuse - they would militate against the fulfilment of the Covenant's provisions.

62. Finally, paragraph 34 of the report implied that minors could incur the death penalty. If true, that was a violation of the provisions of article 6 of the Covenant.

63. Mr. ANDO welcomed the delegation of Senegal, a country which was one of the leading promoters of human rights. While the report submitted by the Government of Senegal was good in general, more detailed information would be appreciated on a number of points.

64. He associated himself with the concern expressed by Mr. Lallah regarding the family prerogatives of the husband vis-à-vis the wife. Had Senegal ratified the Convention on the Elimination of all Forms of Discrimination against Women and, if not, was it planning to do so?

65. With regard to discrimination in general, he noted that article 3 of the Constitution of Senegal prohibited discrimination on certain grounds. He would like to know whether women could assert their rights in the context, for example, of political parties.

66. Under article 27 of the Covenant, the rights of minorities with regard to culture, religion and language could not be denied. However, neither the second nor the third periodic report of Senegal contained comprehensive information on the manner in which Senegal was implementing the provisions of that article. In that regard, reference had been made in the Committee to events in southern Senegal (Casamance) and he would welcome information on the long-term policy being pursued by Senegal to resolve the situation.

67. Referring to paragraph 87 of the report, he asked the delegation for information concerning the grounds for deprivation of Senegalese nationality.

68. Mr. HERNDL remarked that the Committee had always appreciated the cooperation shown by the Government of Senegal.

69. He wished to say, first of all, that any national law must be consistent with treaties and conventions ratified by the Government. In that connection, he was pleased to see that the primacy of international obligations was emphasized in paragraph 5 of the report. His question concerned the problem of who could determine the unconstitutionality of a law. In that regard, he noted that articles 63 and 82 of the Constitution of Senegal stated that the Supreme Court could declare a law unconstitutional. He therefore assumed that it was within the power of the Supreme Court to declare unconstitutional a law that would be inconsistent with the Covenant. However, there remained the question of how the Supreme Court could be seized of the matter and what procedure was followed because in principle the Court could only declare a law unconstitutional at the request of the President of the Republic or of at least one tenth of the members of the National Assembly. He asked whether an individual could in the last resort raise the question with the Supreme Court and whether the Court could then make a decision on the compatibility of the national law with the Covenant.

70. With regard to the application of article 27, the third periodic report contained an interesting summary of United Nations activities in the field of minorities. That summary offered the conclusion that the question of minorities had still not been fully settled in international law and that it could therefore be stated that the problem of minorities, as currently defined, did not exist in Senegal.

71. During the Committee's consideration of the second periodic report of Senegal, some members had inquired whether any difficulties had been experienced in the effective enjoyment by minorities of their rights under article 27 of the Covenant and why, in the absence of religious or ethnic conflict in Senegal, it had been necessary in article 3 of the Constitution to prohibit political groupings based on ethnic or religious affiliation. The report stated clearly that there were in Senegal several linguistic groups, which should come under the provisions of article 27 of the Covenant from the standpoint of their culture and language. He requested additional information on that issue and expressed concern at the statements in paragraphs 15 and 104 of the report relating to unrest in southern Senegal.

72. Mr. FOFANA (Senegal) thanked the members for their expressions of appreciation concerning his country.

73. He wished, first of all, to reply to the questions raised concerning polygamy. It was an institution which existed in Senegal and would always exist. It was a sociological reality that had created problems during the colonial era. Since the French could only register one marriage under the European civil statutes, the colonizers had devised an indigenous system under which up to three or four marriages could be registered. They had therefore been obliged to adopt their legislation to that sociological reality. When the question of preparing a Family Code had arisen, the initial tendency had been to suppress polygamy. Following the presentation of the draft Family Code in the National Assembly, realistic legislators had recognized that the Senegalese were by nature polygamous and that it would be Utopian to adopt a law abolishing polygamy in Senegal. The adoption of such a law would give rise to the reaction

that had taken place in countries like Tunisia, Côte d'Ivoire and Guinea, where the legislatures had created a situation where men had had as many as 50 wives. Senegal had therefore included options in the Family Code which permitted polygamy but limited the number of wives to three. It should be noted, however, that the legislature imposed on a polygamous husband the obligation to treat his wives equally. In Senegal, a woman could complain to a judge if her husband violated his obligations.

74. With regard to the question relating to the declaration of states of emergency in 1988 and 1989, he said that the two events had not been related. In 1988, a state of emergency had been declared following events that had occurred after the elections and should be seen in that context. The state of emergency declared in 1989 had related to events between Senegal and Mauritania and had concerned solely the Dakar region. Like the state of emergency declared in 1988, it had merely imposed a curfew and people had been free to move about during the daytime.

75. With regard to the question whether the provisions of the Covenant could be invoked before Senegalese courts, he said that article 79 of the Constitution provided for the primacy of international obligations over national legislation. In that connection, he recalled that two years previously, the Indictment Division had released certain individuals who had argued that their detention was contrary to the Covenant.

76. There was no problem with regard to the question of minorities in Senegal, particularly in view of the Covenant's definition of that term. People in the south were not regarded as members of minorities and were involved in all levels of public affairs.

The meeting rose at 1 p.m.